IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GARY BANKS, Plaintiff,)
v.)) 2:04cv1551
GREGORY GIDDENS, et al., Defendants.) Electronic Filing)

ORDER OF COURT

AND NOW, this ______ day of June, 2006, after the plaintiff filed a civil rights action in the above-captioned case, and after a motion for summary judgment was filed on behalf of the remaining defendants, and after a Report and Recommendation was issued by the United States Magistrate Judge, and the parties were granted ten days after being served with a copy to file written objections thereto, and upon consideration of the objections filed by the plaintiff, and after independent review of the pleadings, and the Magistrate Judge's Report and Recommendation, which is adopted as the opinion of this Court,

IT IS ORDERED that the motion for summary judgment submitted on behalf of the remaining defendants GREGORY GIDDENS, ALLEN LYNCH, JR., JOSHUA ORPEN, JOHN KNUPSKY, JR., FRANK CHIRICO, JOE GREEN, MICHAEL FERSON, ROSEMARY HORNER, and ROBERT S. BITNER (Document No. 73) is granted.

Plaintiff's Objections (Doc. No.82) are without merit. At this juncture plaintiff has the obligation to come forward with affirmative evidence to counter the material defendants have submitted to demonstrate there is not genuine of material fact remaining for trial. While plaintiff's position is long on excuses as to why he has failed to come forward with any evidence to meet his burden, it is short on containing even a simple reference to any actual substantive evidence plaintiff could offer to overcome the clear showing defendants have made in support of their position. Because all actual evidence bearing on the matters raised demonstrate that defendants did not violate any of plaintiff's constitutional rights, summary judgement in defendant's favor must be granted.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the F.R.App.P., if the plaintiff desires to appeal from this Order, he must do so within thirty (30) days by filing a notice of appeal as provided by Rule 3 F.R.App.P.

David Stewart Cercone United States District Judge

cc: Honorable Robert C. Mitchell United States Magistrate Judge

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